(195 ) Department

SERIES.

G.O. No. 1111

Dated 1st May 1951

[Despatch Abstract.]

Elections - Madras Legislative Assembly - Commerce Constituency -

Whether registration of a firm under the Indian Partnership Act is necessary and whether a person can vote in his own capacity and also as a nominee of a firm, etc - Papers recorded.

GOVERNMENT OF COCHIN.

L4-35729/23.

The Huzur Secretariat,
Ernakulam,
Dated 5th March 1948.

From

M.R.Ry. N.S. Radhakrishna Sarma, Av., M.A., B.L.,
Secretary to Government,
Law Department.

To

The Chief Secretary to the Government of Madras,
Elections Department.

Sir,

Sub:- Elections - Constituency for Commerce.

I have the honour to request you to kindly enlighten me the procedure adopted for elections to the Madras Legislature on the following points:-

(1) whether registration of a firm under Partnership Act is necessary so as tomake it eligible for enrolment in the Electoral roll for the Constituency for Commerce; and

(2) whether a person who is eligible for enrolment and to vote in an election to the Commerce Constituency in his individual capacity can cast his vote also as an authorised representative of a firm. In this connection kind reference is solicited to paragraph 3(c) of Section IV of the Madras Electoral Rolls Rules.

An early reply is solicited.

Your most obedient servant,

(Sd) N.S. Radhakrishna Sarma.

Secretary to Government for Cochin Government.

From
D. Padmanabhan, Esq., I.C.S.,
Collector of Madras.

To

The Chief Secretary to Government,
Public (Elections) Department, Madras.

L.Dis. No. 3491/48 dated 3rd ~~August~~ April 1948.

Sir,

Sub:- Elections - Madras Legislative Assembly _
Special Constituencies - Commerce Constituencies -
Voting practice.
Ref:- Government Endorsement No. 1308/48-2, Public (Elections) dated 31.3.1948.

With regard to the point raised in paragraph

2 of the letter communicated with the Government Memorandum cited above, I have to state that paragraph 18(2) of Part I of the Government of India, Provincial Legislative Assemblies' Order is particularly designed to prevent the inclusion of the name of a person more than once in the ~~xxxxx~~ electoral roll for any particular constituency. Such concentration of more votes than one, in the same person will not be in order. It follows therefore that if a person has been included in the electroal roll of a commerce constituency in his individual capacity he cannot again be included in the same roll as a nominee of a firm or a Corporation. Again as per the instructions in the latter part of the paragraph cited above, it is clear that even if a person's name has been included twice in the electoral roll of any constituency the fact of his inclusion does not increase his rights of voting, even under different capacities. If a person's name happens to be included twice under different capacities, i.e. in his individual capacity as a member of the constituent body and also as a nominee of a firm then as per the rules quoted above it necessarily follows that he cannot exercise his right of voting twice but some other nominee should vote on behalf of the firm in case the same elector has exercised his franchise in his individual capacity. There appear to be no such cases of double inclusion in the case of any of the Commerce constituencies and no person will in actual practice be permitted to vote twice though his name might have been included twice in the electoral roll of any constituency in different capacities.

(Sd) x x x
For Collector.

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GOVERNMENT OF MADRAS.
Public (Elections) Department.

Letter/Reference No. 1308/48-5.

From

Sri. K. Ramunni Menon, I.C.S.,
Chief Secretary to Government.

To

The Secretary to the Government of Cochin,
Law Department,
The Huzur Secretariat,
Ernakulam.

Dated, Fort St. George, the 4th May 1948.

Sir,

Sub:- Elections - Madras Legislative Assembly - Commerce Constituency - Voting practice.

Ref:- Your letter No. L4/35729/23 dated 5.3.1948.

With reference to the first point raised in the letter cited, I am directed to state that section 4 of the Indian Partnership Act defines a 'firm' as consisting collectively of the persons who have entered into partnership with one another. To constitute a partnership only three elements are prescribed, viz., (1) there must be an agreement entered into by all the persons concerned, (2) the agreement must be to share the profits of a business and (3) the business must be carried on by all or any of the persons concerned, acting for all. If these elements are present, a 'firm' comes into existence and the registration is optional and not obligatory. The only effect of non-registration is to preclude the filing of certain suits referred to in section 69. Therefore 'firms' whether registered or unregistered come within the purview of paragraph

12 of Part II of the Government of India (Provincial Legislative Assemblies) Order, 1936. In other words, registration of a firm under the Indian Partnership Act is not a condition necessary for entitling it for enrolment in the rolls of a Commerce Constituency.

2. As regards the second point raised in the letter under reference, the practice hitherto followed in this Province - based on paragraph 18(2) of Part I of the Government of India (Provincial Legislative Assemblies) Order, 1936 - is this, If a person has been included in the roll of a Commerce Constituency in his individual capacity, he cannot again, be included in the same roll as a nominee of a firm or a Corporation. Even if a person's name happens to be included twice under different capacities, i.e. in his individual capacity as a member of the Constituent body and also as a nominee of a firm, he cannot exercise his right of voting twice but some other nominee should vote on behalf of the firm in case the same elector has exercised his franchise in his individual capacity. However no such instances of double inclusion in the case of any of the Commerce Constituencies of the Madras Legislative Assembly have come to the notice of this Government so far.

Yours faithfully,

K. Ramunni Menon,
Chief Secretary to Government.

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/True copy/

Office Assistant,
Madras Record-Office.

PUBLIC (ELECTIONS) DEPARTMENT

Electoral Rolls - Madras Legislative Assembly - Commerce Constituency - Inclusion.

From the Secretary to the Cochin Government, Law Department, No. L4/35729/23 dated 5.3.1948.

Please seethe letter from the Secretary to the Cochin Government in the c.f. The points raised are examined below:-

(1) Whether registration of a firm under Partnership Act is necessary so as to make it eligible for enrolment in the electoral rolls for the Commerce Constituency:- The qualifications entitling a person to be registered as a voter in the Commerce Constituency are contained in paragraph 12 of Part II of the Government of India (Provincial Legislative Assemblies) Order, 1936. The provisions do not mention that a firm should be registered under Partnership Act so as to make it eligible for enrolment in the electoral rolls of the Commerce Constituency The absence of a reference in the Order suggests that the registration of a firm under Partnership Act may not be necessary for electoral purposes.

(2) Whether a person who is eligible for enrolment and to vote in a election to the Commerce Constituency in his individual capacity can cast his vote also as an authorised representative of a firm:- Paragraph 18 of Part I of the Government of India (Provincial Legislative Assemblies) Order seems to be relevant on this issue. It is extracted below:-

"18. (1) The fact that a person or body has, in relation to any constituency, more than one qualification to be include or to nominate persons to be included, in the electoral roll therefor, shall not increase his or its rights as respects inclusion, or as the case may, the nomination of persons for inclusion, in that roll.

(2) No person shall be entitled to be included twice in the electoral roll for any constituency, and the fact that a person is included twice in the electoral roll for a constituency shall not increase his rights as respects voting therein".

The Secretary has invited attention to paragraph 3(c) of Section IV of the Madras Legislative Assembly (Preparation Revision and Publication of Electoral Rolls), Rules, It states that where a corporation, firm or Hindu joint family is included in the electoral roll in its capacity as a member of any chamber, the Registration Officer shall also enter in the roll the names of individuals nominated by such corporation, firm or family to act as electors and exercise the vote on its behalf This should, however , be read subject to paragraph 18 of Part I of the Legislative Assemblies Order. The provisions of the above paragraph 18 seems to rule out the view that a person who is eligible for enrolment and to vote in an election to the Commerce Constituency in his individual capacity can cast his vote also as an authorised representative of a firm.

The remarks of Legal may be invited on these points.

x x x
17.3.1948.

LEGAL DEPARTMENT

Section 4 of the Indian Partnership Act defines

a 'firm' as consisting collectively of the persons who have entered into partnership with one another. To constitute a partnership only three elements are prescribed, viz., (1) there must be an agreement entered into by all the persons concerned, (2) the agreement must be to share the profits of a business, and (3) the business must be carried on by all or any of the persons concerned, acting for all. If these three elements are present, a 'firm' comes into existence, and registration is optional and not obligatory. The only effect of non-registration is to preclude the filing of certain suits referred to in section 69. There is therefore no objection to consider 'firms' whether registered or unregistered as coming within the purview of paragraph 12 of Part II of the Government of India (Provincial Legislative Assemblies) Order, 1936.

As regards the second point raised in the note of Public (Elections) the matter is not very clear and paragraph 18 of Part I of the Order does not seem to be quite appropriate. The inclusion of the name of the representative of the firm in the electoral roll of the Commerce constituency is not by virtue of his qualifications but on account of his authorisation by the firm. There may be precedents of such cases, in Public. If not, they may ascertain what the practice in such cases is.

x x x
23.3.1948.

x x x
24.3.

PUBLIC (ELECTIONS) DEPARTMENT

With reference to 'A' above, a draft endorsement on page 2 c.f. to the Collector of Madras, who is the Registration Officer for Commerce Constituencies is submitted for approval.

x x x
31.3.

(Issued as Endorsement No. 1308/48-2 dated 31.3.48).
From the Collector of Madras, L.Dis. No. 3491/48
dated 3.4.1948.

The letter from the Collector of Madras on page 3 c.f. may be perused. The point for consideration is whether a person who is eligible for enrolment and to vote in an election to the Commerce Constituency in his individual capacity can cast his vote also as an authorised representative of a firm. The Collector supports the view taken by this department that paragraph 18(2) of Part I of the Government of India (Provincial Legislative Assemblies) Order is applicable to the point raised. Applying the paragraph to the present case, it would mean that if a person has been included in the electoral roll of a Commerce Constituency in his individual capacity he cannot again be included in the same roll as a nominee of a firm, and even if he happens to be included twice under different capacities, i.e. in his individual capacity as a member of the Constituent body and also as a nominee of a firm, he cannot exercise his right of voting twice but some other nominee should vote on behalf of the firm in case the same elector has exercised his franchise in his individual capacity. The Collector has stated that there appear to be no such cases of double inclusion in the case of any of the Commerce Constituencies and no person will in actual practice be permitted to vote twice though his name might have been included

twice in the electoral roll of any constituency in different capacities. It may be mentioned that the same practice is followed in the case of other constituencies. The above practice is clearly based on paragraph 18(2) of Part Iofthe Order. The Legal view that paragraph 18 of Part I is not quite appropriate does not therefore appear to be convincing. They may be requested to reconsider their view on the second point.

S.V.
7.4.

K.R.M.
8.4.

LEGAL DEPARTMENT

A further examination that has been made of the matter indicates that a fuller explanation is called for. There is a distinction between qualification and capacity. A person may be entitled to vote in a general constituency because he pays a certain amount as income-tax or because he pays a certain amount as profession tax or land revenue. These are different qualifications, And merely because a person possesses more than one of these qualifications, he is not entitled to have his name entered more than once. But this capacity is different. An individual may hold property in his own name. He may hold property as the guardian of a minor. He may hold property as the president of a charitable trust or as the president of a company. In these situations, he has not different qualifications, but different capacities. He is, so to speak, so many different juristic persons and may act in as many different ways. The South Indian Chamber of Commerce consists of individuals, firms and companies. 'X' may be entitled to vote in that constituency in his own right, and he may be also a member of a firm entitled to cast a vote. There is nothing to prevent that firm from nominating X to cast its vote. To hold a different view may lead to this position; A firm may consist of partners everyone of whom is entitled to vote in his own right. To say that the firm cannot nominate anyone of its partners to cast its vote on its behalf would have the effect of disfranchising that firm. Similarly, every-one of the officers of a Corporation which is a member of the Chamber of Commerce may be entitled to vote in his own right. To say, that the Corporation cannot nominate one of them to cast its vote unless the officer so nominated gives up his right to vote in his individual capacity, would have the effect of disfranchising one or the other. It is unlikely that such a result was intended. A person, natural or juristic, can be deprived of the right to vote only in the form prescribed by law. It will be noticed that rule 18(1) - P in Part I - speaks of qualification and not capacity. The difficulty apparently apprehended is that the same name may occur twice in the electoral roll. That need not be so. At one place the name of 'X' will appear. At another place the name of the firm will appear and the person nominated by it. The true position would be that there are not one but two different persons: One is the individua and the other, the firm or the Corporation, as the case may be.

The vote would be the vote not of X but of the firm.

In this connection, reference is invited to rule 7 of the 6th schedule, to the Government of India Act, 1935 which provides that 'no person shall vote at a general election in more than one territorial constituency .....". This provision seems to imply that a person may vote both in a territorial constituency and a special constituency.

I have not been able to see any provision which prohibits a person from casting a vote in his own capacity and another as the agent of somebody else.

Such appears to me to be the correct legal position;

but at the same time it is possible that the balance of convenience ~~was~~ lies in not questioning existing practice till someone obtains a ruling from the High Court.

x x x
28.4.

PUBLIC (ELECTIONS) DEPARTMENT

The Legal notes on pages 4-6 above may be perused. The position as set out by the Legal Secretary is that there is nothing to prevent a person casting a vote in his own capacity and another as a nominee of a firm or a corporation. The practice all along followed has been not to permit a person to vote twice even though his name might have been included twice in the electoral roll of any constituency in different capacities - vide the Madras Collector's letter at page 3 c.f. As the Cochin Government request for information regarding the procedure adopted in this Province, they may perhaps be informed on the lines of the Madras Collector's letter as regards the second point, Subject to orders, a draft letter to the Cochin Government is submitted for consideration.

S.V.
1.5.1948.

K.R.M.
3.5.

(Issued as letter No. 1303/48-5 dated 4.5.1948).

There is no further action in the file. The papers may be recorded in a G.O. for facility of future reference.

S.V.
6.5.

G.O. Ms. No. 1097 dated 7.5.1948.

Elections - Madras Legislative Assembly - Commerce Constituency - Whether registration of a firm under the Indian Partnership Act is necessary and whether a person can vote in his own capacity and also as a nominee of a firm, etc - Papers recorded.

...

/True copy/

K. Thiruvengadam
Office Assistant,
Madras Record Office.

k.y.s.